

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

US DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FILED

SEP 14 2018

By DOUGLAS F. YOUNG, Clerk
Deputy Clerk

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff,)
)
v.)
)
HAPPY VALLEY, LLC d/b/a HAPPY)
VALLEY NURSING AND REHABILITATION)
)
Defendant.)

CIVIL ACTION NO. 18-6089

COMPLAINT

JURY TRIAL DEMAND

NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights act of 1991 to correct unlawful employment practices based on sex and to provide appropriate relief to Mandy Herring, Stephanie Smith, Ilene Smith, and a class of females who were adversely affected by such practices. As alleged with greater particularity below, Plaintiff Equal Employment Opportunity Commission (the Commission) alleges that Defendant, Happy Valley, LLC d/b/a Happy Valley Nursing and Rehabilitation (Happy Valley or Defendant Employer), subjected Mandy Herring, Stephanie Smith, Ilene Smith, and a class of females to sexual harassment and a sexually hostile work environment and then terminated their employment or forced them to resign in retaliation for complaining about sexual harassment and/or reporting sexual harassment.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to §706(f)(1) and (3) of Title

VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. §2000e-5(f)(1) and (3) and 42 U.S.C. §2000e-3(a), and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

2. The employment practices alleged to unlawful were committed within the jurisdiction of the United States District Court for Western District of Arkansas, Hot Springs Division.

PARTIES

3. Plaintiff, Equal Employment Opportunity Commission (Commission), is the agency of the United States of America charged with the administration, interpretation, and enforcement of Title VII and is expressly authorized to bring this action by §706(f)(1) and (3) of Title VII, 42 U.S.C. §2000e-5(f)(1) and (3) and 42 U.S.C. §2000e-3(a).

4. At all relevant times, Defendant Employer has continuously been an Arkansas limited liability company doing business in the State of Arkansas and the City of Malvern and has continuously had at least 15 employees.

5. At all relevant times, Defendant Employer has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

6. At all relevant times, Defendant Employer has been a covered entity under 42 U.S.C. §2000e-5(f)(1) and (3) and 42 U.S.C. §2000e-3(a).

ADMINISTRATIVE PROCEDURES

7. More than thirty days prior to the institution of this lawsuit, Mandy Herring (Herring), Stephanie Smith (S. Smith), and Ilene Smith (I. Smith) filed charges of discrimination with the Commission against Defendant Employer alleging Defendant violated Title VII.

8. On July 31, 2018, the Commission issued to Defendant Employer Letters of Determination finding reasonable cause to believe Defendant violated the Title VII and invited Defendant Employer to join with the Commission in informal methods of conciliation to endeavor to eliminate the discriminatory practices and to provide appropriate relief.

9. The Commission engaged in communications with Defendant Employer to provide Defendant with the opportunity to remedy the discriminatory practices described in the Letters of Determination.

10. The Commission was unable to secure from Defendant Employer a conciliation agreement acceptable to the Commission.

11. On August 15, 2018, the Commission issued Defendant Employer Notices of Failure of Conciliation.

12. All conditions precedent to the institution of this lawsuit have been fulfilled.

STATEMENT OF SEXUAL HARASSMENT CLAIMS

13. Since at least May of 2016, Defendant Employer has engaged in unlawful employment practices at its Malvern, Arkansas location in violation of §703(a) of Title VII, 42 U.S.C. § 2000e-2(a).

14. The unlawful employment practices involved subjecting Herring, S Smith, ISmith, and a class of females (collectively claimants) to unwelcome sexual harassment because of their sex, female.

- a. Defendant hired Herring as a licensed practical nurse in October of 2015.
- b. Defendant hired S. Smith as the director of nursing in January of 2017.
- c. Defendant hired I. Smith as a certified nursing assistant in October of 2017.

- d. In May of 2016, Herring complained that she had been sexually harassed by the maintenance supervisor, a management employee.
- e. In September of 2017, S. Smith learned that two employees were subjected to sexual harassment by the maintenance supervisor, a management employee.
- f. In October of 2017, I. Smith was harassed by the maintenance supervisor, a management employee.
- g. The sexual harassment consisted of sexual comments and touching of a sexual nature.
- h. The sexual harassment was not welcome.
- i. The unwelcome sexual harassment was collectively sufficiently severe or pervasive to alter the terms and conditions of the claimants' employment by creating a sexually hostile work environment.
- j. Even though Defendant has been on notice of sexual harassment by the maintenance supervisor since May of 2016, Defendant took no corrective action and the harassment continued through at least May of 2018.
- k. Defendant does not maintain a sexual harassment policy.
- l. Defendant failed to take appropriate remedial measures to protect the claimants from sexual harassment.

15. The effect of the practices complained of in Paragraphs 13 and 14 has been to deprive the claimants of equal employment opportunities and to otherwise adversely affect their employment because of their sex, female.

16. The unlawful employment practices complained of in Paragraphs 13 and 14 were intentional.

17. The unlawful employment practices complained of in Paragraphs 13 and 14 were done with malice or with reckless indifference to the federally protected rights of the claimants.

STATEMENT OF THE RETALIATION CLAIMS

18. Beginning in May of 2016, Defendant engaged in unlawful employment practices at its Malvern, Arkansas location in violation of Title VII, 42 U.S.C. §2000e-3(a).

19. The unlawful employment practices include terminating the claimants' employment and/or forcing them to resign in retaliation for reporting the harassment to Defendant and/or for filing a charge of discrimination with the EEOC.

20. Mandy Herring, Stephanie Smith, and Ilene Smith all reported sexual harassment by the maintenance supervisor, a management employee, to Defendant.

- a. Herring, S. Smith, and I. Smith all reported sexual harassment to the owner of Happy Valley.
- b. Additionally, I. Smith reported to Defendant that she had contacted the EEOC regarding Defendant's actions.
- c. All the claimants were terminated and/or were forced to resign within days and or weeks of reporting the sexual harassment.

21. The effect of the practices complained of in Paragraphs 19-20 above has been to deprive the claimants of equal employment opportunities and otherwise adversely affect their status as employees because they reported sexual harassment and/or filed a charge of discrimination with the EEOC.

22. The unlawful employment practices complained of in Paragraphs 19-20 above were and are intentional.

23. The unlawful employment practices complained of in Paragraphs 19-20 above were and are done with malice or with reckless indifference to the federally protected rights of the Claimants.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from engaging in harassment and any other employment practice which discriminates based on sex, female.

B. Grant a permanent injunction enjoining Defendant, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from engaging in retaliation and any other employment practice which discriminates against an employee who has engaged in a protected activity under Title VII.

C. Order Defendant to institute and carry out policies, practices, and programs which provide equal employment opportunities for women and which eradicate the effects of its past and present unlawful employment practices.

D. Order Defendant to make whole Mandy Herring, Stephanie Smith, Ilene Smith, and a class of females by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described above in amounts to be determined at trial.

E. Order Defendant to make whole Mandy Herring, Stephanie Smith, Ilene Smith, and a class of females by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of above, including emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation in amounts to be determined at trial.

F. Order Defendant to pay Mandy Herring, Stephanie Smith, Ilene Smith, and a class of females punitive damages for its malicious and reckless conduct described above in amounts to be determined at trial.

G. Grant such further relief as the Court deems necessary and proper in the public interest.

H. Award the Commission its costs of this action.

JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by its Complaint.

Respectfully submitted,

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